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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-sixth session
Agenda item 10 (d)

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES
THE RIGHT TO A FAIR TRIAL

Mr. Alfonso Martínez, Mr. Bengoa, Ms. Chavez, Mrs. Daes, Mr. El-Hajjé, Mr. Fix Zamudio, Mrs. Forero Ucros, Mr. Guissé, Mrs. Gwanmesia, Mr. Hatano, Mr. Khan, Mr. Lindgren Alves, Mr. Maxim, Ms. Palley, Mr. Ramadhane, Ms. Warzazi and Mr. Yimer: draft resolution

The right to a fair trial

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolution 1990/18 of 30 August 1993, in which it decided to entrust Mr. Stanislav Chernichenko and Mr. William Treat with the preparation of a study entitled "The right to a fair trial: current recognition and measures necessary for its strengthening",

Recalling also its resolutions 1991/14 of 28 August 1991, 1992/21 of 27 August 1992 and 1993/26 of 25 August 1993, as well as Commission on Human Rights resolutions 1991/43 of 5 March 1991 and 1992/34 of 28 February 1992 and decision 1993/106 of 5 March 1993,

Recalling, in particular, Commission decision 1994/107 of 4 March 1994, by which it decided to consider at its fifty-first session the final report of the Special Rapporteurs including, if appropriate, the desirability of a

third optional protocol to the International Covenant on Civil and Political Rights, aimed at guaranteeing under all circumstances the right to a fair trial and a remedy,

Recalling also articles 8, 10 and 11 of the Universal Declaration of Human Rights, which affirm the right of every individual to a fair and public hearing by an independent and impartial tribunal, the right to be presumed innocent until proven guilty and the right to an effective remedy,

Recalling further article 14 of the International Covenant on Civil and Political Rights, which reaffirms the right of every individual to a fair and public hearing,

Mindful of article 9, subparagraphs 3 and 4 of the International Covenant on Civil and Political Rights which require States parties to ensure that an arrested or detained person is brought promptly before a judge or similar officer and that anyone who is deprived of liberty is entitled to take proceedings before a court in order that the court may without delay determine the lawfulness of the detention and order release if the detention is not lawful,

Mindful also of article 2.3 of the International Covenant on Civil and Political Rights and article 8 of the Universal Declaration of Human Rights, which assure the right to an effective remedy for violations of human rights,

Noting that the fair trial provisions contained in articles 5, 6, 7 and 26 of the African Charter on Human and Peoples' Rights are non-derogable,

Noting also that the judicial guarantees for the protection of the rights made non-derogable by article 27 of the American Convention on Human Rights are non-derogable,

Noting further the guarantees of a fair trial and a remedy incorporated in articles 5, 7, 12, 13 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Noting in addition that articles 96 and 99 to 108 of the Geneva Convention relative to the Treatment of Prisoners of War prescribe the rights of prisoners of war in judicial proceedings; that articles 54, 64 to 74, and 117 to 126 of the Geneva Convention relative to the Protections of Civilian Persons in Time of War provide for the right to a fair trial and a remedy in occupied territories and extend fair trial guarantees in international armed conflicts to all persons including those arrested for actions relating to the conflict,

Noting additionally that common article 3 of the four Geneva Conventions of 12 August 1949 for the protection of war victims and article 6 of Additional Protocol II to the Geneva Conventions contain indispensable judicial guarantees

for the protection of the right to a fair trial during non-international armed conflicts,

Aware of the Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles on the Independence of the Judiciary, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors, which are intended to apply at all times,

Aware also that the Human Rights Committee at its fiftieth session decided to communicate to the Sub-Commission its view that the remedies provided in article 9, subparagraphs 3 and 4 read in conjunction with article 2 are inherent in the International Covenant on Civil and Political Rights as a whole,

Aware further that the Human Rights Committee at its twenty-first session adopted General Comment No. 13 on article 14 in which it indicated that States parties should, even in times of public emergency, respect the conditions in paragraph 1 of article 14 of the Covenant,

Having examined the preparatory report (E/CN.4/Sub.2/1990/34), the preliminary report (E/CN.4/Sub.2/1991/29), the progress reports (E/CN.4/Sub.2/1992/24 and Add.1-3 and E/CN.4/Sub.2/1993/24 and Add.1-3) and the final report (E/CN.4/Sub.2/1994/24) on the right to a fair trial and a remedy, prepared by the Special Rapporteurs,

1. Expresses its appreciation to Mr. Stanislav Chernichenko and Mr. William Treat for their final report and for their recommendations for strengthening the implementation of the right to a fair trial and a remedy;

2. Also expresses its appreciation to the Governments, non-governmental organizations and bar associations that provided information for the study, for example by responding to the questionnaires prepared by the Special Rapporteurs;

3. Reaffirms that articles 2.3, 9.3, 9.4 and 14 of the International Covenant on Civil and Political Rights are inherent in the Covenant as a whole and should accordingly be considered to be non-derogable, particularly because they are necessary to protect other non-derogable rights;

4. Endorses the other recommendations of the Special Rapporteurs for strengthening the implementation of the right to a fair trial and a remedy;

5. Recommends, as suggested by the Special Rapporteurs, that the international monitoring of the right to a fair trial and a remedy continue through such bodies as the Human Rights Committee; the Working Group on Arbitrary Detention; the Special Rapporteur on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers; the European Commission and Court of Human Rights; the Inter-American Commission on and Court of Human Rights; the African Commission on Human and Peoples' Rights; and international trial observers sent by intergovernmental organizations, Governments, and non-governmental organizations;

6. Endorses the useful summary of norms and interpretations embodied in the draft body of principles on the right to a fair trial and a remedy (E/CN.4/Sub.2/1994/24, annex II) and believes it beneficial to consider the draft body of principles;

7. Notes with appreciation and approves the proposal of the Special Rapporteurs to compile, without financial implications, the entire study so that it can be published in one volume to be issued under the United Nations Human Rights Study Series;

8. Recommends the following draft decision to the Commission on Human Rights for adoption:

"The Commission on Human Rights, noting resolution 1994/... of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, expresses its appreciation to the Special Rapporteurs, Mr. Stanislav Chernichenko and Mr. William Treat, for their work on the study entitled 'The right to a fair trial: current recognition and measures necessary for its strengthening' and decides to endorse the request of the Sub-Commission to publish the full study in all the official languages of the United Nations, taking into account, inter alia, the comments received from Governments and members of the Sub-Commission, as well as the most recent developments up to the date on which the report is ready for publication, and to give the study the widest possible distribution. The Commission also decides to consider at its fifty-second session the establishment of an open-ended working group to draft a third optional protocol to the International Covenant on Civil and Political Rights aiming at guaranteeing

under all circumstances the right to a fair trial and a remedy, and recommends the following draft decision to the Economic and Social Council for adoption:

'The Economic and Social Council, recalling its decision 1994/251 of 22 July 1994, approves the endorsement by the Commission on Human Rights of the request of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to Mr. Stanislav Chernichenko and Mr. William Treat to publish their compiled report on the right to a fair trial and a remedy, as described in Sub-Commission resolution 1994/... of ... August 1994, and requests the Secretary-General to provide all assistance necessary for the compilation and publication of the compiled report.'"

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